

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Bright House Networks, LLC)	CSR 7034-E
)	
Petition for Determination of Effective)	
Competition in Temple Terrace, FL (FL0490))	

MEMORANDUM OPINION AND ORDER

Adopted: July 12, 2007

Released: July 13, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Bright House Networks, LLC ("Bright House") has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(4) and 76.907 of the Commission's rules for a determination of effective competition in Temple Terrace, Florida. Bright House Networks alleges that its cable system serving Temple Terrace is subject to effective competition pursuant to Section 623(1)(1)(D) of the Communications Act¹ and the Commission's implementing rules,² and is therefore exempt from cable rate regulation. Bright House claims the presence of effective competition in this franchise area stems from the video programming services offered by Verizon Florida Inc. ("Verizon"), which Bright House asserts is a local exchange carrier that provides local exchange access services in Temple Terrace. No opposition to the petition was filed. Finding that Bright House is subject to effective competition in Temple Terrace, Florida, we grant the petition.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l)(1) of the Communications Act⁴ and Section 76.905 of the Commission's rules.⁵ A cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that it does exist in its franchise area.⁶

¹ 47 U.S.C. §§ 543(a)(4), 543(l)(1)(D).

² 47 C.F.R. § 76.905(b)(4).

³ 47 C.F.R. § 76.906.

⁴ 47 U.S.C. § 543(l)(1).

⁵ 47 C.F.R. § 76.905(b).

⁶ See 47 C.F.R. §§ 76.906, 76.907(b).

II. DISCUSSION

4. Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if a local exchange carrier (“LEC”) or its affiliate offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, provided the video programming services thus offered are comparable to the video programming services provided by the unaffiliated cable operator in that area.⁷

5. The Commission has stated that an incumbent cable operator could satisfy the LEC effective competition test by showing that the LEC is technically and actually able to provide services that substantially overlap the incumbent operator’s service in the franchise area.⁸ The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so; that no regulatory, technical, or other impediments to household service exist; that the LEC is marketing its services so that potential customers are aware that the LEC’s services may be purchased; that the LEC has actually begun to provide services; the extent of such services; the ease with which service may be expanded; and the expected date for completion of construction in the franchise area.⁹

6. Bright House operates a cable television system in Temple Terrace and, having been assigned the Community Unit Identification (CUID) number shown in the caption, qualifies as the incumbent cable operator within that franchise area for purposes of the “LEC” effective competition test in this proceeding. Bright House provided information showing that the Commission has determined that Verizon is a LEC and that the State of Florida certified Verizon to provide local telecommunications services as an incumbent LEC.¹⁰ Therefore, Verizon qualifies as a LEC for purposes of the LEC effective competition test.¹¹

7. In addition to qualifying as a LEC, Verizon received a local cable franchise from Temple Terrace authorizing it to provide cable programming services throughout the community.¹² Under the terms of its franchise agreement with Temple Terrace, Verizon must complete its build-out in the Franchise Area by May 17, 2008 or face franchise revocation.¹³ In addition, Bright House offers evidence that Verizon has distributed press releases, local advertising, and marketing materials so that potential cable subscribers are broadly aware of the availability of its cable services and need only contact Verizon to obtain cable service.¹⁴ Furthermore, Bright House reports that Verizon already passes over 25 percent of households in Temple Terrace.¹⁵ Thus, Bright House has shown that Verizon’s

⁷ 47 U.S.C. § 543(1)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4). This statutory effective competition test may be referred to as the “LEC” effective competition test.

⁸ *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) (“*Cable Reform Order*”).

⁹ *Id.*

¹⁰ Petition at 2-3; Exh. A & B.

¹¹ *See* 47 U.S.C. § 543(1)(1)(D); 47 U.S.C § 153(a)(26).

¹² Petition at 3; Exh. C.

¹³ Petition at 7; Exh. C at §§3.1 and 13.

¹⁴ Petition at 8; Exh. A.

¹⁵ Petition at 4, Exh. E. The affidavit submitted as Exhibit E states that the Bright House Networks employee was
(continued...)

current level of penetration combined with its obligations to complete its build-out in Temple Terrace is sufficient to indicate that Verizon offers video programming services consistent with the evidentiary requirements set forth in the *Cable Reform Order* for purposes of determining effective competition.¹⁶

8. The Verizon marketing materials also show that its cable systems offer more than 160 channels of video programming that include non-broadcast programming services such as ESPN, HBO and CNN as well as a complement of several local television broadcast stations.¹⁷ Based on this record, we find that Verizon's complement of programming services compares with the programming available on Bright House's systems¹⁸ and is sufficient to satisfy this aspect of the LEC effective competition test.¹⁹ Bright House also provided evidence that Verizon has commenced providing cable service and intends to build-out service within Temple Terrace in a reasonable amount of time, and has shown that no regulatory, technological, or other impediments exist. Furthermore, the evidence shows that Verizon has marketed its services in a manner that makes potential subscribers aware of its services, and that Bright House Networks has otherwise satisfied the LEC effective competition test consistent with the evidentiary requirements set forth in the *Cable Reform Order*.²⁰ Based on the foregoing, we conclude that Bright House has submitted sufficient evidence to demonstrate that its Temple Terrace cable system is subject to effective competition.

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"of the opinion that Verizon's video distribution network is now available for all single family homes in Temple Terrace." The affidavit also notes that based on marketing research and interviews with former Bright House Networks customers, Verizon has at least 200 customers in Temple Terrace. No objection to Bright House Networks' characterization of Verizon's homes passed data has been filed.

¹⁶ 47 C.F.R. §76.905(b)(4); 47 C.F.R. §76.905(e)(1)-(2); *Cable Reform Order*, 14 FCC Rcd. at 5305; *In re Kansas City Cable Partners*, 18 FCC Rcd 14187, 14189 (2003); *In re Cablevision of Boston*, 17 FCC Rcd 4772, 4776-4779 (2002).

¹⁷ Petition at 9, Exh. A.

¹⁸ Petition at 9, Exh. F.

¹⁹ See 47 C.F.R. § 76.905(g).

²⁰ *Cable Reform Order*, 14 FCC Rcd at 5305.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petition filed by Bright House Networks, LLC for a determination of effective competition in Temple Terrace, Florida **IS HEREBY GRANTED**.

10. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service granted to Temple Terrace, Florida **IS REVOKED**.

11. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²¹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division, Media Bureau

²¹ 47 C.F.R. § 0.283.